

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In re Application of	)	
	)	
PCM, Inc.	)	
	)	File No. 0000252429
For Authority to Construct and	)	
Operate a Cellular Station	)	
In Market No. 666A2	)	
Texas 15 – Concho RSA	)	

**Order**

**Adopted: November 2, 2001**

**Released: November 5, 2001**

By the Chief, Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau:

1. In this Order, we address a Petition to Dismiss or Deny (Petition) filed by Concho Cellular Telephone Company (Concho) on December 8, 2000 against PCM, Inc.’s (PCM) above-captioned application.<sup>1</sup> For the reasons discussed below, we grant Concho’s Petition and dismiss PCM’s application for a site in Richland Springs, Texas.

2. On October 3, 1995, the Commission granted Kent A. Foster (Foster) permanent authority to operate a cellular system in the Texas 15 - Concho RSA, Market 666A (Texas 15) under call sign KNKQ428.<sup>2</sup> Pursuant to section 22.947 of the Commission’s rules, the five-year build-out date for Texas 15 was October 3, 2000.<sup>3</sup> On February 21, 1997, the Commission granted Foster’s application to assign his authorization under call sign KNKQ428 to Concho.<sup>4</sup> On November 2, 2000, Concho submitted its system information update (SIU)<sup>5</sup> depicting Concho’s coverage as of October 3, 2000, the end of the five-year build-out period as required by section 22.947(c) of the Commission’s rules.<sup>6</sup> Concho’s SIU

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<sup>1</sup> Concho Cellular Telephone Company Petition to Dismiss or Deny, File No. 0000252429, filed December 8, 2000.

<sup>2</sup> See In the Matter of Lone Star Cellular, Inc. Application for Interim Operating Authority in Cellular Radio Telephone Service Texas 15-Concho RSA Market 666A, *Order*, 15 FCC Rcd. 4602 (WTB 2000). See also *Public Notice*, Report No. CL-95140, released October 3, 1995.

<sup>3</sup> 47 C.F.R. § 22.947. The licensee of the first cellular system authorized on each channel block in each cellular system is afforded a five-year period, beginning on the date the initial authorization for the system is granted, during which it may expand the system *within* that market.

<sup>4</sup> The Commission granted a pro forma assignment of license from Kent A. Foster to Concho Cellular Telephone Company, Inc., Market No. 666A, Texas 15-Concho RSA. See Wireless Telecommunications Bureau Commercial Wireless Service Information, *Public Notice*, Report No. LB-97-21, released February 21, 1997.

<sup>5</sup> See Concho Cellular Telephone Company’s System Information Update (SIU), filed November 2, 2000 (Concho’s SIU). A SIU is comprised of a full map, a reduced map, and an exhibit showing technical data relevant to the determination of the system’s cellular geographic service area (CGSA).

<sup>6</sup> 47 C.F.R. § 22.947(c).

demonstrated that Concho provided coverage to the vast majority of the Texas 15 RSA, including Richland Springs, as of October 3, 2000.<sup>7</sup>

3. On November 3, 2000, PCM submitted the above-captioned Phase I application proposing a site location in Richland Springs, Texas.<sup>8</sup> On December 8, 2000, Concho timely filed its Petition against the above-captioned application, arguing that PCM's application is defective because: (1) the application sought spectrum previously assigned to Concho on an exclusive basis and could not be assigned to PCM without causing harmful interference in violation of section 1.934(e)(2) of the Commission's rules;<sup>9</sup> (2) the location of PCM's proposed facilities would cause harmful interference with Concho's cellular system without obtaining written consent from Concho in violation of Section 22.911 of the Commission's rules;<sup>10</sup> and (3) the PCM application proposes services to a location that is not unserved in violation of section 22.949(a)(1)(iii) of the Commission's rules.<sup>11</sup>

4. On December 21, 2000, PCM filed an opposition to Concho's Petition, arguing that its application is not defective because it does not propose facilities that would overlap impermissibly with Concho's cellular geographic service area (CGSA).<sup>12</sup> Specifically, PCM contends that Concho does not have a cell site at Richland Springs, and that Concho's Commission filings claiming to have constructed a cell site at Richland Springs were false.<sup>13</sup> Therefore, PCM argues its application is not defective and should be granted.<sup>14</sup> On January 11, 2001, Concho filed a reply to PCM's opposition stating that PCM's claims were misguided, and that Concho had, and continues to have, an operating cell site that provides service to the area PCM proposes to serve prior to the October 3, 2000 five-year build-out date.<sup>15</sup>

5. After reviewing materials submitted by both Concho and PCM, we find that PCM's above-captioned application proposes a coverage area that overlaps Concho's CGSA in violation of sections 1.934(e)(2) and 22.949(a)(1)(iii) of the Commission's rules.<sup>16</sup> PCM's claim that Concho had not constructed a site at Richland Springs prior to the five-year build-out period is unsubstantiated. Pursuant to section 22.947 of the Commission's rules,<sup>17</sup> Concho had an exclusive right to expand within its market for five years from the date the initial authorization for Texas 15 was granted. Since authorization for Texas 15 was granted on October 3, 1995,<sup>18</sup> Concho had until October 3, 2000 to expand its system.

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<sup>7</sup> See Concho Cellular Telephone Company SIU. The Richland Springs area is covered primarily by the cell site located 3.5 miles southwest of Richland Springs.

<sup>8</sup> File No. 0000252429.

<sup>9</sup> 47 C.F.R. § 1.934(e)(2).

<sup>10</sup> 47 C.F.R. § 22.911(d)(2)(i).

<sup>11</sup> 47 C.F.R. § 22.949(a)(1)(iii).

<sup>12</sup> PCM, Inc. Opposition to Petition to Dismiss or Deny, File No. 0000252429, filed December 21, 2000. The CGSA of a cellular system is the area considered by the FCC to be served by the cellular system. The CGSA is the area within which cellular systems are entitled to protection and within which adverse effects for the purpose of determining whether a petitioner has standing are recognized.

<sup>13</sup> *Id.* at 2.

<sup>14</sup> *Id.*

<sup>15</sup> Concho Cellular Telephone Company Reply to Opposition to Petition to Dismiss or Deny, filed January 11, 2001. In its Reply, Concho provided declarations of several individuals who had personal knowledge of Concho's tower, which is located 2.5 miles from Richland Springs. Concho also provided pictures of its tower.

<sup>16</sup> 47 C.F.R. §§ 1.934(e)(2), 22.949(a)(1)(iii).

<sup>17</sup> 47 C.F.R. § 22.947.

<sup>18</sup> See *Public Notice*, Report No. CL-95140, released October 3, 1995.

Concho's November 2, 2000 SIU indicates that Concho is providing service to Richland Springs, the same area PCM proposes to serve.<sup>19</sup> Therefore, PCM's application is in violation of sections 1.934(e)(2) and 22.949(a)(1)(iii) of the Commission's rules.<sup>20</sup> For these reasons, we grant Concho's Petition and dismiss PCM's above-captioned application as defective.

6. Accordingly, IT IS ORDERED that, pursuant to sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and sections 0.331 and 1.939 of the Commission's rules, 47 C.F.R. §§ 0.331 and 1.939, the Petition to Dismiss or Deny filed by Concho Cellular Telephone Company IS GRANTED.

7. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and sections 1.934(e)(2), 22.911, and 22.949(a)(1)(iii), 47 C.F.R. §§ 1.934(e), 22.911, and 22.949(a)(1)(iii) of the Commission's rules, the above-captioned Phase I unserved area application filed by PCM, Inc., File No. 0000252429, on November 3, 2000 IS DISMISSED as defective.

FEDERAL COMMUNICATIONS COMMISSION

Paul D'Ari  
Chief, Policy and Rules Branch  
Commercial Wireless Division  
Wireless Telecommunications Bureau

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<sup>19</sup> See Concho Cellular Telephone Company SIU.

<sup>20</sup> 47 C.F.R. §§ 1.934(e)(2), 22.949(a)(1)(iii).